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IN THE

# Supreme Court of the United States

October Term, 1963
No. 584

ROGER ARNEBERGH,

*Petitioner,*

*vs.*

JACOB ZEITLIN and PAUL FERGUSON,

*Respondents.*

**Petition for a Writ of Certiorari to the Supreme Court of the State of California.**

**Motion for Leave to File Brief Amici Curiae of Citizens for Decent Literature, Inc., an Ohio Corporation, and California Citizens for Decent Literature, Inc., a California Corporation, in Support of Petitioner.**

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## Motion for Leave to File Brief Amici Curiae of Citizens for Decent Literature, Inc., an Ohio Corporation, and California Citizens for Decent Literature, Inc., a California Corporation, in Support of Petitioner.

Citizens for Decent Literature, Inc., an Ohio Corporation, with local affiliates throughout the United States is a non-profit, non-sectarian and non-political corporation with national headquarters in Cincinnati, Ohio, formed for and dedicated to the cause of good, decent and wholesome literature with a view to oppose and eliminate obscene literature, by cooperating with

law enforcement in the enforcement of the laws. California Citizens for Decent Literature, Inc., a California Corporation, operates as an affiliate of the national organization and is similarly dedicated.

The formulation of both organizations grew out of an impelling demand on the part of the larger segments of society, especially responsible fraternal, civic and religious organizations, which seek to bring under control the nationwide dissemination of obscene literature

At its recent national convention in Chicago during October of 1963, the national organization of Citizens for Decent Literature adopted a policy aimed at giving increased support in the fight against "obscenity", through legal advocacy in the court-room in support of the people's case. Such action made possible, for the first time, the filing of the brief referred to herein.

On November 7, 1963, which was the earliest opportunity presented for effectuating this new policy, the undersigned, as counsel for *amici curiae* posted airmail letters to the counsel of record for the parties in the above-entitled cause, requesting written consent to the filing of a brief *amici curiae*. The undersigned was advised by telephone on November 13, 1963 that the consent of the petitioner herein was posted on November 12, 1963. In the same communication advice was received that respondents, by letter dated Nov. 11, 1963, have advised the clerk of the court that a reply brief would not be filed in the said cause. As of the date of preparation of this motion, no reply has been received from respondents, indicating whether or not their consent will be given.

Respondent's letter of Nov. 11, 1963 appears to function as an express waiver under Rule 24(3), 28 U. S. C. A., accelerating the time for the clerk's distribution of the petition, record and briefs to the court for its consideration. It therefore becomes advisable to file the within motion, pursuant to Rule 42(3), 28 U. S. C. A., in advance of respondent's reply to said request of *amici curiae* for consent to filing, so that such filing may not be considered tardy under Rule 42(1), 28 U. S. C. A.

Amici curiae propose to submit a comprehensive brief in support of the following reasons for granting the writ and raising the following questions, all of which were raised in the Court below in an amicus brief filed by California Citizens for Decent Literature, Inc.

A. The Supreme Court of the State of California has decided three federal questions of substance not theretofore determined by this Court:

(1) Whether the People have a federal constitutional right to a jury determination on the issue of "obscenity."

(2) Whether the determination of "obscenity" is primarily an issue of fact and whether the Court's review is limited to the question, "whether or not reasonable minds may differ that the material is obscene."

(3) Whether "Tropic of Cancer", as a matter of law, is without the area of protected speech and press as that line is drawn in *Roth v. United States* and *Alberts v. California*, 354 U. S. 476, 1 L. Ed. 2d 1498 (1957), whether that line be drawn at "obscenity" or "hard-core pornography."

B. The Supreme Court of the State of California has decided the following federal question of substance in a way not in accord with the applicable decisions of this Court:

(1) Whether freedom of speech and the press, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and as construed in *Roth v. United States* and *Alberts v. California (supra)*, and other decisions of this Court, limit the proscription of state obscenity laws to the suppression of "hard-core" pornography only.

The above referred to California Citizens for Decent Literature, Inc. amicus brief is on file with this Court as a part of the record in this case.

In light of the above, motion is therefore made for leave to file a brief amici curiae in support of the Petition for Writ of Certiorari in the above-entitled cause.

Respectfully submitted,

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JAMES J. CLANCY,
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